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In the

Supreme Court of the United States

October Term, 1948

No. 469

ATTY M. JACKSON

Petitioner

vs.

BURR LAMBERT

Respondent

PETITIONER'S BRIEF

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SUMMARY OF ARGUMENT

Upon the dissolution of the marital relation the petitioner became a tenant in common with her husband in his one-half interst in the partnership of Lambert and Jackson, but since Lambert and Jackson continued to carry on the partnership business without an accounting or settlement for a period of seven years without objection from any one concerned, (R 9, 51-3), Lambert and Jackson impliedly accepted the petitioner as a partner, and since she raised no objection to the continuance of the business (R 51-3), she impliedly consented to become a partner.

LIST OF AUTHORITIES CITED

Clay vs. Field, 139 U. S. 474, 34 Law Ed. 1046 7

New York Life Insurance Company vs. Hageman et al, 80 Federal 2d 446 (7th Circuit) 10

Taylor vs. Catalon, 166 S. W. 2d 102 (Supreme Court of Texas) 6

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A STATEMENT OF THE FACTS

This is an action for an accounting. The case was tried before the court without a jury, and judgment was rendered against the petitioner denying the accounting, which judgment was affirmed by the Circuit Court of Appeals for the Seventh Circuit.

The facts developed upon the trial are more fully stated as follows:

The petitioner and F. B. Jackson, Jr. were married in 1918 and continued to live together in Texas as husband and wife until March 8, 1939, when F. B. Jackson, Jr. procured a divorce from the petitioner in the State of Arkansas; that during the time that they lived together as husband and wife, the petitioner and F. B. Jackson, Jr. accumulated a considerable amount of property, which, under the laws of the State of Texas, was the community property of the petitioner and the said F. B. Jackson, Jr.; that a part of the community property consisted of a steam powered oil well drilling rig and a Diamond T truck.

Prior to their divorce F. B. Jackson, Jr., with the knowledge and consent of the petitioner, entered into a partnership agreement with the respondent, Burr Lambert, for the purpose of engaging in the business of producing and marketing crude oil, buying and selling oil and gas leases and drilling oil wells in Illinois, and, by the terms of the agreement, F. B. Jackson, Jr. was to contribute the rig and truck and other things of value, and Burr Lambert was to contribute his time and labor (R. 9, 10, 51-2, 26).

No disposition was made in the divorce suit of the property rights of the petitioner and F. B. Jackson, Jr., and there was no dissolution of the partnership nor settlement with the petitioner at the time of the divorce (R. 9), but, on the contrary, Jackson and Lambert, with knowledge of the petitioner's rights, continued to carry on the partnership business in exactly the same manner as it had been carried on before the divorce until at least the latter part of the year 1941 when F. B. Jackson, Jr. claimed that he sold his interest in the partnership business to Burr Lambert (R. 53-4, 9). There was no settlement or dissolution of the partnership at that time, insofar as this petitioner was concerned, but Burr Lambert continued to carry on the business, and has until this time, in the same manner as it had been carried on before,

using the petitioner's property and incurring obligations for which she and her property were liable, and that the said Burr Lambert has continued to carry on said business (R. 9, 53-6, 26, 39, 30, 32, 33).

The court tried the case solely on the issue of whether or not the partnership relation between Mrs. Jackson and Burr Lambert ever came into existence, and, after hearing the testimony, rendered judgment against the petitioner, and that judgment was affirmed by the Circuit Court of Appeals (R. 69, 99).

Two stipulations were filed, an original and supplemental, in which all of the facts pleaded were admitted except the fact that none of the parties had ever demanded or offered a settlement or dissolution of the partnership, and this was undisputed (R. 9, 65). This fact was testified to by the petitioner (R. 51, 4), and Burr Lambert corroborated all that she said on that point. We request the court to read all of the direct examination of Burr Lambert beginning on Page 22 of the record.

THE CONTESTED ISSUES

The contested issues are (1) whether or not the petitioner ever became a partner in the firm of Lambert and Jackson and was entitled to an accounting as such, and (2) whether or not, in the absence of the partnership relation, she was entitled to an accounting upon the theory of tenancy in common.

PROPOSITIONS OF LAW RELIED ON

Where, after the divorce of one of the partners, the partnership business is continued for several years without a settlement or dissolution, and without protest from any one concerned, the divorced wife is entitled to an accounting (1) as a partner, and (2) upon the theory of tenancy in common

with her ex-husband in his part of the partnership assets.

AUTHORITIES

Clay vs. Field, 138 U. S. 474, 34 Law Ed. 1046
New York Life Insurance Company vs. Hageman et al 80 Federal 2d 446 (7th Circuit)
Taylor vs. Catalon, 166 S. W. 2d 102 (Supreme Court of Texas)
Clausen vs. Pugovel et al, 100 N.Y.S.
Meyer vs. Meyer et al, 194 N.Y. Sup. 718
Shenk vs. Lewis, 118 S.E. 631 (Supreme Court of South Carolina)
Tufts vs. Latshaw, 72 S.W. 678 (Supreme Court of Missouri)
Volume 80, A.L.R., 20, 26
Volume 47, Corpus Juris, 1076

ARGUMENT

We think the foregoing statement shows beyond question that there was an implied agreement among Burr Lambert, F. B. Jackson, Jr., and the petitioner, Atty M. Jackson to the continuance of the partnership business following the divorce, and that there was an implied agreement between the petitioner, Atty M. Jackson, and Burr Lambert to the continuance of the partnership business following the settlement between Burr Lambert and F. B. Jackson, Jr.

Ordinarily, upon the death of a member of a partnership, the partnership is presumed to be dissolved, and the assets are held by the surviving partners and the heirs of the deceased partners as tenants in common unless there is a revival by agreement, expressed or implied, of the partnership relation. 80 A.L.R. 20. We think an analogous situation arose upon the dissolution of the marital relation between the petitioner and F. B. Jackson, Jr.

In Taylor vs. Catalon, 166 S.W. 2d 102 (Supreme Court of Texas), the court held that upon the dissolution of the

marital relation by divorce, the husband and wife became tenants in common of their community property. Therefore, the petitioner, Atty M. Jackson, and F. B. Jackson, Jr. became tenants in common in Jackson's one-half interest in the partnership upon the rendition of the divorce decree, and, when Lambert and Jackson failed to settle with her within a reasonable time and continued to carry on the partnership business with her consent, she became a partner by implication.

On Page 26 of Volume 80, A.L.R., is the following statement:

> "So, the result in the case of Parsons v. Hayward (English case) in which a partner who had failed to wind up the affairs of the firm at the expiration of the term in accordance with the partnership article but had continued in the business, was held accountable for subsequently earned profits, was based upon the ground that the partnership had not really been dissolved, but had been continued by implied contract." Citing a number of American cases.

In Clay vs. Field, 138 U. S. 474, 34 Law Ed. 1044, 1047, the court said:

> "The general principle of law undoubtedly is, that on the dissolution of the firm by the death of one of the partners, it is the survivor's duty to settle up the partnership affairs within a reasonable time, and pay over to the representatives of the deceased partner the amount due them; and if he takes the responsibility of continuing the business of the firm, and using the property of the partnership, he becomes liable for losses that may occur, and it is the option of the representatives of the deceased partner either to insist upon a division of the profits, which may be made in thus carrying on the business, or upon being paid the amount of the deceased's share in the capital, with lawful interest thereon, after deducting his indebtedness to the firm."

On Page 1076 of Volume 47, Corpus Juris, is the following statement:

> "In the latter case, however, the right of the legal representatives of the deceased partner to compensation for the use of the decedent's capital in the business is not

dependent upon the earning of profits, but they have the right to elect between interest on decedent's capital in the partnership business or the proportionate share of the profits of the business which is properly attributable to the use of the decedent's capital therein."

In Meyer vs. Meyer et al, 194 N.Y. Sup. 718 (Paragraph 3) the court held that it was the duty of the surviving partners to wind up the partnership and pay the estate of the deceased partner for his interest, but where they continue the business, using the capital of the deceased partner, the deceased partner's wife has the option of either demanding interest on the amount of the capital or to require an accounting for the reasonable share in the profits of the business. Citing Story on Partnership, Seventh Edition, Section 373. The court further held that the survivors were bound to utmost fairness of disclosure, and that they were under the duty of accounting to the widow of the deceased partner.

In Tufts vs. Latshaw, 72 S.W. 679, 683, the Supreme Court of Missouri held:

"The point is made by defendant that the evidence did not sustain the allegations of the petition, but we do not agree to this contention. The petition alleges that Williams, instead of settling up the partnership estate, used its assets in the continuation of the business until he made the assignment to the defendant, who then took charge of and sold and disposed of them. Defendant claims that there was evidence tending to show that a portion of the property that went into the assignee's hands was purchased by Williams with his individual funds; but, even if this was so, the law is well settled that, when a person who holds property in a fiduciary capacity mixed his own property with it so that it cannot be separated nor the amount of each ascertained, the whole becomes, both at law and in equity, the property of the trust estate. National Bank vs. Insurance Co., 104 U. S. 54, 26 L. Ed. 693. In Perry on Trusts, section 838, it is said: 'Upon the same principle, if the executor of a deceased partner is also the surviving partner, and he continues the deceased partner's capital without author-

ity in the business, and changes the property many times over, yet the court follows the trust fund through all these changes, and gives the beneficiaries of the deceased partner's estate the capital, and all its proceeds or gains in the business in which it has been employed'."

In Shenk vs. Lewis, 118 S.E. 631 (Supreme Court of South Carolina), the court said:

"Upon the dissolution of a partnership by the death of one of the partners, the following principles of law are applicable:

(1) The surviving partner immediately becomes a trustee of the entire partnership property, for the purpose of liquidating the affairs of the partnership, and as expeditiously as the circumstances of the partnership will permit, to convert the assets into cash, pay off the liabilities, adjust the equities between the partners, and distribute the remainder of the estate between the surviving partner and the representative of the deceased partner according to their respective interests.

* * * * *

If they (surviving partners) go on with the business under the credit, and risking the effects of the firm, and profits result, they will be bound to account for those profits as belonging to the firm, and they are liable to be so charged with interest on the funds they use, though no profit, or even a loss, is made." Riddle vs. Whitehill, 135 U.S. 621, 10 Sup. Ct. 924, 34 L. Ed. 283.

In Clausen vs. Puvogel et al, 100 N.Y.S. 49, the Court said:

"The plaintiff, in the circumstances disclosed had her election to have an accounting to the estate as of the date of the death of her father, and to demand that the surviving partner account for and pay over the share of the assets of the estate to which she would be entitled, together with interest thereon, or, instead of asserting this claim for interest, to claim the profits of the business, which, according to her theory, was wrongfully conducted by the appellant with the firm assets. Having made such election, she is only entitled to an accounting for the principal and for the profits which take the place of interest. In such case the appellant is not obliged to

> account in detail for the business as conducted by him, and he may in the first instance merely account for the profits, but the contestant is then at liberty to show that the profits are greater than the amount admitted."

In New York Life Insurance Company vs. Hageman 80 Federal 2nd 446, 447, (7th Circuit), the Court said:

> "We find nothing in this record tending to indicate that after the death of Weiner there ever was a winding up of the affairs of this partnership. Not only does the record fail to disclose any such winding up, but it indicates facts tending to show that the parties regarded the partnership as continuing. The same business continued to be carried on, in the same partnership name, until the death of the last surviving partner. So far as the record discloses, whatever of Weiner's capital or interest was in the partnership at his death remained there after his death. If it so remained, and the business continued to be carried on as before, it is fair to assume that this was with the consent of the surviving partners and of the heirs and the personal representatives of the deceased partner." See People v. Zangain, 301 Ill. 299, 303, 133 N.E. 783.

The undisputed facts show that after the divorce Burr Lambert and F. B. Jackson, Jr. carried the business on in exactly the same way that it had been carried on before the divorce and under the same partnership name, and that Burr Lambert, after the dissolution between himself and F. B. Jackson, Jr., continued to carry on the business under the same name and in exactly the same way that it had been carried on before, and we think that under these circumstances, there is no escape from the conclusion that there was an implied agreement on the part of all parties to continue the partnership relation.

But, if the court does not agree with the partnership theory, then certainly upon the granting of the divorce, the petitioner and her ex-husband became tenants in common in his share of the partnership assets, and she is entitled to an accounting on that theory.

Premises considered, petitioner respectfully prays that the judgment of the trial court and the Circuit Court of Appeals be reversed and that the cause be remanded for a trial on the merits.

Respectfully submitted,
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